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DECISION

THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D.C. 20548

FILE: B-205256

DATE: November 16, 1981

MATTER OF: Ingersoll-Rand Company

DIGEST:

1. Although, with proper justification, DAR § 1-313(c) may be cited as authority for the sole-source procurement of "source controlled" replacement parts, the overall policy of DAR § 1-313 requires the procurement of spare parts on a competitive basis where feasible. Consequently, GAO will not object to an agency procurement from other than the original source of the equipment.
2. GAO does not review affirmative determinations of responsibility absent allegations of fraud or misapplication of definitive responsibility criteria.
3. Where the protester's initial submission clearly shows the protest is without legal merit, case development is unnecessary and summary denial is in order.

↑ Ingersoll-Rand Company protests the Defense Logistics Agency's decision to award another firm a contract for the replication of valve assemblies for use on Ingersoll-Rand high-pressure air compressors.

The protester makes two arguments: (1) that the valves should ^{have} been procured from the protester on a sole-source basis under the authority of Defense Acquisition Regulation (DAR) § 1-313 (Defense Procurement Circular No. 76-5, October 15, 1976) and (2) that only Ingersoll-Rand can properly test the required valve assemblies.

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DAR § 1-313(c) permits the procurement of "source controlled" replacement parts (that is, nonstandard parts) "only from sources that have satisfactorily manufactured or furnished such parts in the past, unless fully adequate data * * * test results, and quality assurance procedures, are available with the right to use for procurement purposes * * *."

We have taken the position that:

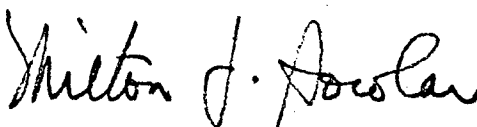
"* * * while DAR § 1-313(c) allows a procuring activity to solicit only approved suppliers, it does not preclude the submission and consideration of proposals from unapproved sources which can otherwise qualify their products under suitable testing procedures. Mercer Products & Manufacturing Co., B-188541, July 25, 1977, 77-2 CPD 45; 52 Comp. Gen. 546, 548-49 (1973). Indeed, DAR § 1-313 does not constitute a mandate to effect sole source awards regardless of the capability of producers which have not previously supplied the parts in question. Rotair Industries; D. Moody & Co., Inc., B-190392, December 13, 1978, 58 Comp. Gen. [149], 78-2 CPD 410. Reliability assurance and interchangeability of parts may be obtained through competitive negotiation procedures as well as from sole source buys from the original manufacturer. B-166435, July 1, 1969. Merely designating parts as 'engineering critical,' without regard to the willingness or ability of other sources to produce the parts, may perpetuate an unjustified sole source position. 50 Comp. Gen. 184 (1970)." Metal Art, Inc., B-192579, April 3, 1979, 79-1 CPD 229.

We have consistently taken the position that agencies must give alternative producers an opportunity to qualify when procuring under the authority of DAR § 1-313(c). Parker Hannifin Corporation, B-199937(1), October 2, 1981, 81-2 CPD ____. Further, in view of

policy directing agencies to obtain maximum practicable competition on procurements, we do not consider protests against competition. Don-Ko Water Treatment Company, B-203067, May 28, 1981, 81-1 CPD 419. We therefore find no merit in the protester's first argument.

The second argument concerns the Defense Logistics Agency's affirmative determination of the awardee's responsibility, that is, whether the awardee has the capability to test the valve assemblies. We do not review an agency's affirmative determination of responsibility except where fraud or misapplication of definitive responsibility criteria is alleged. Edward E. Davis Contracting, Inc., B-190055, September 29, 1977, 77-2 CPD 245. Neither is alleged here.

It is clear from the protester's initial submission that the issues presented are either not subject to our review or legally without merit. Therefore, we have decided the protest without obtaining an agency report since it would serve no useful purpose. Northern Illinois University, B-194055, March 15, 1979, 79-1 CPD 184.

for 
Comptroller General
of the United States